

Exhibit E

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EXHIBIT E

Federal Communications Commission Office of Plans and Policy, Working Paper No. 26: *Broadcast Television in a Multichannel Marketplace*, 6 FCC Rcd. 3996 (rel. June 27, 1991), available on Westlaw (1991 WL 640551).

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6 F.C.C.R. 3996
1991 WL 640551 (F.C.C.), 6 FCC Rcd. 3996

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Federal Communications Commission (F.C.C.)

OPP Working Paper No. 26

BROADCAST TELEVISION IN A MULTICHANNEL MARKETPLACE
DA 91-817

Released: June 27, 1991

Florence Setzer [FN1]

Jonathan Levy [FN1]

EXECUTIVE SUMMARY

This study examines changes in the competitive situation of the television broadcasting industry from 1975 to 1990 and presents some predictions for the next decade. [FN1] Over the past fifteen years the range of broadcast, cable, and other video options available to the American viewer has increased dramatically. Broadcast television, however, has suffered an irreversible long-term decline in audience and revenue share, which will continue throughout the current decade.

In the next ten years, broadcasters will face intensified competition as alternative media, financed not only by advertising but also by subscription revenues, and offering multiple channels of programming, expand their reach and their audience. Television broadcasting will be a smaller and far less profitable business in the year 2000 than it is now. Although broadcasting will remain an important component of the video mix, small-market stations, weak independents in larger markets, and UHF independents in general will find it particularly difficult to compete, and some are likely to go dark. The analysis supports the conclusion that in the new reality of increased competition regulations imposed in a far less competitive environment to curb perceived market power or concentration of control over programming are no longer justified and may impede the provision of broadcast services.

THE 1975-1990 PERIOD

In 1975, the United States had three commercial broadcast television networks and no cable networks; cable television was solely a broadcast retransmission medium. Only 17 percent of television households subscribed to cable in 1976; over 56 percent subscribed in 1990. By 1990, there were four commercial broadcast networks and over 100 national and regional cable networks. The number of broadcast stations had increased by 50 percent, with independent stations accounting for three-quarters of the growth. The number of off-air stations available to the median household increased from six in 1975 to ten in 1990, and by 1990 94 percent of television households were located in markets with five or more television stations. In 1975, there were no home satellite dish systems and no home videocassette recorders (VCRs); in 1990, 3 percent of television households had home dishes and 69 percent owned VCRs.

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Industry observers believe that the growth of cable made possible the expansion in the number of broadcast television stations by increasing the potential audiences of UHF stations. [FN13] Cable carriage of over-the-air signals reduces the disadvantage of UHF relative to VHF stations by increasing UHF stations' geographic reach and improving their reception quality. Channel positioning also appears important to the success of broadcast stations, and cable systems can give UHF stations desirable low channel positions. Satellite delivery of syndicated programming may also have encouraged the growth in numbers of television stations by making program distribution more flexible and efficient and less expensive.

The increase in the number of over-the-air stations is reflected in an increase in the number of stations available to viewers (table 4). [FN14] In

TABLE 4

HOUSEHOLDS IN ADI'S WITH VARIOUS NUMBERS OF OVER-THE-AIR SIGNALS

	1975		1980-81		1984-85		1989-90	
	%	Cum. %	%	Cum. %	%	Cum. %	%	Cum. %
20+	0.0	0.0	0.0	0.0	0.0	0.0	10.1	10.1
15-19	14.3	14.3	13.8	13.8	20.5	20.5	17.2	27.3
10-14	6.8	21.1	12.8	26.6	15.2	35.7	26.5	53.8
5-9	57.7	78.8	56.8	83.4	51.9	87.6	40.1	93.9
1-4	21.1	99.9	16.5	99.9	12.4	100.0	6.1	100.0

FNSOURCE: Arbitron Ratings Company, Television Market and Rankings Guide, 1975, 1980-81; 1984-1985 ADI Market Guide; Television ADI Market Guide 1989-1990.

FNNOTE: Percentages do not add to 100 due to rounding.

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1975, 79 percent of television households were located in markets with 5 or more stations, not counting cable channels; by 1990 94 percent of television households were in markets with 5 or more stations (typically the three major networks, a PBS station, and an independent). In 1975 14 percent of television households had available 15 or more over-the-air stations; in 1990 27 percent had 15 or more stations and 10 percent had 20 stations. Not only has the number of television signals available increased dramatically over the past 15 years, but over-the-air service is such that most households have considerable choice in programming even without cable. Ironically, however, this expansion of over-the-air signals was made possible by cable.

TELEVISION VIEWING

Time spent watching television has increased by almost an hour per day per household since 1975. Total household viewing reached a peak in 1985, however, and has declined slightly since. [FN15]

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Federal Communications Commission, Report and Order, *In re Amendment of Parts 73 and 76 of the Commission's Rules*, FCC GEN. Docket No. 87-24, 3 FCC Rcd. 5299 (rel. July 15, 1988), available on Westlaw (1998 WL 486817) and Lexis (1988 FCC LEXIS 1329).

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Citation Found Document Rank(R) 1 of 1 Database
 3 F.C.C.R. 5299 FCOM-FCC
 1988 WL 486817 (F.C.C.), 64 Rad. Reg. 2d (P & F) 1818, 3 FCC Rcd. 5299

DA 88-180

In the Matter of
 Amendment of Parts 73 and 76 of the Commission's Rules relating to program
 exclusivity in the cable and broadcast industries

GEN. Docket No. 87-24

Report and Order

Adopted: May 18, 1988; Released: July 15, 1988

By the Commission: Commissioner Dennis concurring and issuing a statement at a
 later date.

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I. Introduction

1. In this Report and Order, the Commission adopts changes to its rules regarding program exclusivity to remove anticompetitive restrictions on the ability of broadcasters to serve their viewers. Today's video marketplace calls for an impartial regulatory referee and a common set of fairly-enforced ground rules. This will provide proper market incentives for video outlets to deliver the programming that will maximize consumer benefits rather than foster the economically wasteful duplication of programming that is all too likely under our current rules.

2. This proceeding is a direct outgrowth of concerns we expressed in our 1986

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3 F.C.C.R. 5299

households in the United States, including many in metropolitan areas, [FN58] are already cable subscribers, and the number continues to rise rapidly.

26. Over the past eight years, the number of cable systems has nearly doubled, from 4079 systems serving about eight thousand communities at the end of 1979 to more than 7,800 systems serving about 21,600 communities in mid-1987. [FN59] Most of the systems in existence in 1979 had 12 channels, but by 1987, 91 percent of all cable subscribers had access to 20 or more channels; systems serving 77 percent of all subscribers had 30 or more channels. [FN60] In 1979 there were 76.3 million television households in the United States (98.7 percent of all households); 27 million of these households had access to cable, and of these, 14.8 million actually subscribed to cable (19.4 percent of all TV households and 54.8 percent of all homes passed by cable). [FN61] By the end of 1987, more than 81 percent of the approximately 89 million television households in the United States had access to cable, and nearly 45 million of these were cable subscribers (50.5 percent of all television households and 62 percent of households with access to cable). [FN62] Moreover, much of the growth in the number of cable systems and cable subscribers between 1979 and 1987 took place in major urban markets not yet wired for cable in 1979.

27. A significant reason for the increase in cable subscribers and penetration has been the growth of programming options available to cable subscribers. In 1979, satellite network distribution of cable programming was relatively new. Indeed, two of the most popular cable networks--Cable News Network (CNN), and USA Cable Network--did not begin service until Spring 1980; and a third, MTV, did not begin until summer 1981. [FN63] Of the top 20 satellite cable services (including superstations) in 1987, only six had begun operating by the end of 1979. [FN64] At the end of 1979, 24 video program services--many of them part-time--were distributed by satellite to cable systems; [FN65] by the end of 1987, this number had risen to more than 85 cable programming services. [FN66] Except for the pay cable channels like HBO, most of these cable networks are financed by both national and, increasingly, local advertising and small monthly per-subscriber fees paid to programmers by cable operators. The vast range of cable programming today in comparison with eight years ago reflects new industry alliances and program release patterns. [FN67] Even more importantly, it reflects the fact that cable, throughout this period, has been successful in obtaining significant programming on an exclusive basis. [FN68]

28. Growth in cable programming choices has been accompanied by growth in cable audiences, which in 1979 were too small to be measured by the national television ratings services. [FN69] Although the three-network primetime audience share was beginning to slip even then, it nevertheless stood at 92 percent in November 1979; [FN70] by November 1987, however, it had fallen to 75 percent. [FN71] Cable competition has caused much of this loss: indeed, the drop has been even greater in cable households and in other dayparts. In April 1987, for example, network affiliates had only 52 percent of the weekly viewing audience in cable households, while advertising-supported cable networks (including superstations) had a 27 percent share, pay cable services had an 11 percent share, local independents had a 13 percent share, and public television stations had a 3 percent share. [FN72]

29. This audience increase has been reflected in a growth in cable revenues which has been explosive. In 1979, when the Commission was considering changes in its syndicated exclusivity rules, cable operating revenues were \$1.8 billion, of which \$334 million came from pay programming and less than \$5 million came

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Charles W. Ergen, Testimony Before the Subcommittee on Antitrust, Business Rights, and Competition, Committee on the Judiciary, U.S. Senate (January 27, 1999), available on Westlaw (1999 WL 32965).

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Testimony
January 27, 1999

Senate
Judiciary
Antitrust, Business Rights and Competition

Cable Competition

TESTIMONY OF CHARLES W. ERGEN
BEFORE THE ANTITRUST AND BUSINESS RIGHTS SUB COMMITTEE
OF THE SENATE COMMITTEE ON THE JUDICIARY
JANUARY 27, 1999

Mr. Chairman and distinguished members of this Committee, thank you for providing me the opportunity to testify before you today on competition in the subscription video marketplace and the effect we hope our company's pending acquisition of the MCI/News Corp. assets will have on competition in that market. We would also like to take the opportunity to talk briefly about S. 247, co-sponsored by some of the members of this Committee and introduced last week by Senator Hatch. Passage of that legislation, combined with Commerce Committee legislation, is critical to the success of DBS as a competitor to cable.

My name is Charlie Ergen and I am the founder and Chief Executive Officer of EchoStar Communications Corporation, a Direct Broadcast Satellite ("DBS") company based in Littleton, Colorado. I started EchoStar in 1980 as a manufacturer and distributor of C-Band satellite dishes and grew the company, by the mid-1980's into the largest supplier of C-Band dishes worldwide. I realized, however, that my vision of a dish in every home, school and business in the United States, and true, effective competition to cable, could not be realized with large dishes. Consequently, in 1987, EchoStar filed an application for a DBS permit with the Federal Communications Commission (the "FCC"). EchoStar has launched four DBS satellites since December 1995 and has invested approximately \$2 billion into this technology, working to give consumers a choice to cable.

EchoStar was the first company to drop the price of a dish to below \$200 when the competition was charging \$800 for its product. EchoStar was the first to allow subscribers to pay a low monthly fee as they do with cable. EchoStar was the first to allow consumers to choose the 10 channels they watch the most, then pay for those "a la carte" without having to "buy through" programming they did not want, to get programming they did want.

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Exhibit H

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EXHIBIT H

Charles W. Ergen, Testimony Before the Commerce Committee, U.S. Senate (July 28, 1998), available on Westlaw (1998 WL 526888).

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Citation
1998 WL 526888 (F.D.C.H.)

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Testimony
July 28, 1998

Senate
Commerce

Public Broadcasting, Transportation Nominations

TESTIMONY OF CHARLES W. ERGEN CEO, ECHOSTAR COMMUNICATIONS
CORPORATION BEFORE THE SENATE COMMERCE COMMITTEE ON THE SUBJECT
OF COMPETITION TO CABLE

JULY 28, 1998

Mr. Chairman and distinguished members of this Committee, thank you for providing me the opportunity to testify before you today about competition to cable. I believe DBS can be an effective competitor to cable. The technology is now here today but unfortunately some regulatory hurdles and continuing abuses of market power by cable operators are standing in the way. We urge Congress to act swiftly, remove the remaining hurdles and prevent abuse of cable power so effective competition can emerge and, at last, lower consumer bills.

My name is Charlie Ergen, and I am the founder and Chief Executive Officer of EchoStar Communications Corporation, a Direct Broadcast Satellite ("DBS") company based in Littleton, Colorado. I started EchoStar in 1980 as a manufacturer and distributor of C-band satellite dishes and grew the company by the mid-1980's into the largest supplier of C-band dishes in the world. I realized, however, that my vision of a dish in every home, school and business in the United States, and true, effective competition to cable, could not be realized with large dishes. Consequently, in 1987 EchoStar filed an application for a DBS permit with the Federal Communications Commission (the "FCC"). EchoStar has launched four DBS satellites since December 1995 and has invested approximately \$2 billion in DBS, working to give consumers a choice to cable.

CURRENTLY THERE IS NO EFFECTIVE COMPETITION TO CABLE

In its Fourth Annual Report to Congress, the Federal Communications Commission reconfirmed that, despite the efforts of competitors such as DBS, cable operators continue to possess bottleneck monopoly power in the distribution of multichannel video programming. [1] Among the Commission's findings were the following:

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Exhibit I

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Charles W. Ergen, Testimony Before the Subcommittee on Telecommunications, Trade and Consumer Protection, Committee on Commerce, U.S. House of Representatives (April 1, 1998), available on Westlaw (1998 WL 798847).

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Citation
1998 WL 798847 (F.D.C.H.)

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Testimony
April 01, 1998

House of Representatives
Commerce
Telecommunications, Trade and Consumer Protection

Video Competition Multichannel Programming

TESTIMONY OF
CHARLES W. ERGEN
CEO, ECHOSTAR COMMUNICATIONS CORPORATION

April 1, 1998

Mr. Chairman and distinguished members of this Committee, thank you for inviting me here today to testify before you about the impact that the pending legislation to reform the Satellite Home Viewer Act would have on competition in the multi-channel video delivery market.

My name is Charlie Ergen, and I am the founder and Chief Executive Officer of EchoStar Communications Corporation, a Direct Broadcast Satellite ("DBS") company based in Colorado. I started EchoStar in 1980 as a manufacturer and distributor of C-band satellite dishes and grew the company by the mid -1980s into the largest supplier of C-band dishes in the world. I realized, however, that my vision of a dish in every home, school and business in the United States, and true effective competition to cable, could not be realized with large dishes. Consequently, in 1987 EchoStar filed an application for a DBS permit with the Federal Communications Commission (the "FCC"). EchoStar launched its first DBS satellite in December 1995, its second DBS satellite in September 1996, and its third satellite this past October. We have a fourth satellite launch planned for the first half of this year. By the middle of the year, we will have invested approximately \$2 billion in DBS, working to give consumers a choice to cable.

On behalf of EchoStar's 1.2 million subscribers nationwide, I would like to thank you and the 146 co-sponsors of H.R. 2921, the "Multi channel Video Competition and Consumer Protection Act of 1997", for the effort you are waging on behalf of the American people to keep their satellite subscription fees affordable. The legislation you and your colleagues are considering here in the House, and the legislation Senator John McCain has introduced in the Senate, are crucial to the public we both serve. As you know,

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EXHIBIT J

Charles W. Ergen, Testimony Before the Subcommittee on Courts and Intellectual Property, Committee on the Judiciary, U.S. House of Representatives (February 4, 1998), available on Westlaw (1998 WL 61501).

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Citation
1998 WL 61501 (F.D.C.H.)

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Testimony
February 04, 1998

House of Representatives
Judiciary
Courts and Intellectual Property

Broadcast Retransmission Fees: Satellite v. Cable

Testimony of Echostar Communications Corporation
before the Subcommittee on Courts and Intellectual Property
Committee on the Judiciary
U.S. House of Representatives
February 4, 1998

Mr. Chairman and distinguished members of this Subcommittee, thank you for providing me the to testify before you today. This hearing is particularly timely and important given the mountain of recent evidence that the reforms you are considering are crucial to assuring protection and a fair return to copyright owners, while creating more effective competition to cable. During 1997, cable rates rose 400% faster than the rate of inflation, continuing a troubling pattern that has proven difficult to control. The disparate treatment of cable and satellite retransmission under the existing copyright laws is a significant factor hampering effective competition to cable monopolies from satellite distributors like my company. Only with your help can crucial programming, including superstations and local network channels, be delivered to consumers at competitive rates. Only with your help can the otherwise inevitable road towards significantly increased regulation and oversight of the cable industry be avoided. These efforts are equally important to protect copyright owners from the continuing pressure cable interests assert to obtain ownership interests in programmers, and to drive below market pricing for content.

My name is Charlie Ergen. I am the founder and Chief Executive Officer of EchoStar Communications Corporation, a Direct Broadcast Satellite ("DBS") company based in Colorado. I started EchoStar in 1980 as a manufacturer and distributor of C-band satellite dishes and grew the company, by the mid -1980's, into the largest supplier of C-band dishes in the world. I realized, however, that my vision of a dish in every home school and business in the United States, and true effective competition to cable, could not be realized with large dishes.

Consequently, during 1987 EchoStar filed with the Federal

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EXHIBIT K

Charles W. Ergen, Testimony Before the Subcommittee on Telecommunications, Trade and Consumer Protection, Committee on Commerce, U.S. House of Representatives (October 30, 1997), available on Westlaw (1997 WL 683674).

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1997 WL 683674 (F.D.C.H.)

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Testimony
October 30, 1997

House of Representatives
Commerce
Telecommunications, Trade and Consumer Protection

Video Competition

Testimony of

Charles W. Ergen

Chief Executive Officer

ECHOSTAR COMMUNICATIONS

on

VIDEO COMPETITION: ACCESS TO PROGRAMMING

before

SUBCOMMITTEE on TELECOMMUNICATIONS,
TRADE & CONSUMER PROTECTION

COMMITTEE ON COMMERCE
U.S. HOUSE of REPRESENTATIVES

OCTOBER 30, 1997

SUMMARY OF STATEMENT OF CHARLES W. ERGEN
CEO, ECHOSTAR COMMUNICATIONS CORPORATION
BEFORE THE SUBCOMMITTEE ON TELECOMMUNICATIONS,
TRADE AND CONSUMER PROTECTION
U.S. HOUSE COMMITTEE ON COMMERCE
OCTOBER 30, 1997

EchoStar Communications Corporation appreciates Congress' efforts over the past five years to create competition in the multichannel video programming distribution ("MVPD") marketplace. EchoStar is a Direct Broadcast Satellite (DBS) company which began service in March of 1996 and has over 800,000 subscribers. The company has lead the way to bringing down the price of the DBS dish to under \$200 and has sought to offer a true alternative to cable through aggressive pricing of both the hardware and the programming. Despite the inroads EchoStar has made in offering

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1997 WL 683674 (F.D.C.H.)

the Company by the mid 1980s into the largest supplier of C-band dishes in the world. I realized, however, that my vision of a dish in every home, school and business in the United States, and true effective competition to cable, could not be realized with large dishes.

Consequently, during 1987, EchoStar filed with the Federal Communications Commission (the "FCC") for a DBS license. EchoStar launched its first DBS satellite during December 1995, its second DBS satellite during September 1996, and its third satellite earlier this month. We have a fourth satellite launch planned for the first quarter of next year. By the middle of next year, we will have invested approximately \$2 billion in DBS, working to create true effective competition to cable.

EchoStar's Dish Network currently serves over 800,000 subscribers, most of whom chose the DISH Network over their existing cable provider. Our subscriber count continues to grow each month. The DISH Network offers consumers over 150 channels of digital, CD quality video and audio programming, together with an on screen "TV Guide" type feature that makes it simple to get information and choose the television program you want to watch with the touch of a button from your remote control. We intend to offer significant educational programming, data to the home, free access to political candidates, and other public service options in the near future. We even have a "V chip" included with every receiver, which allows parents to screen out movies and other programming not only according to their MPAA rating, but also according to whether the program includes sexual content, violence, nudity or objectionable language.

Our marketing strategy has been to provide cable subscribers with a true alternative through aggressive pricing. We have been the leader in reducing the cost of DBS hardware to the consumer. The typical DBS system now sells for less than \$200. All systems include the trademark 18 inch dish that has started to be seen with more frequency in cable franchise areas. EchoStar now offers second TV set top boxes at prices as low as \$129. The hardware can be purchased, financed or leased. Consequently, we believe that the price of hardware is no longer a major impediment to consumers switching from cable to satellite.

EchoStar offers 40 of the most popular cable channels for \$19.99 per month, significantly less than typical cable. Additionally, EchoStar refuses to adhere to the cable "tiering" model perpetuated in the carriage agreements offered by cable affiliated programmers, which forces the consumer to subscribe and pay for programming they do not want. Instead, while EchoStar tiers its programming options to comply with requirements in programming agreements, EchoStar also offers the consumer the opportunity to create their own packages, choosing only the

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Comments of EchoStar Satellite Corporation, *In re Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming*, FCC_CS Docket No. 99-230 (August 6, 1999), available on the FCC web site
<https://haifoss.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6009148730>.

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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In the Matter of

Annual Assessment of the Status of
Competition in Markets for the
Delivery of Video Programming

CS Docket No. 99-230

COMMENTS OF ECHOSTAR SATELLITE CORPORATION

EchoStar Satellite Corporation ("EchoStar") hereby submits its Comments in response to the above-captioned Notice of Inquiry released by the Commission on June 23, 1999.

In the Matter of Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming, CS Docket No. 99-230 (rel. June 23, 1999). The Notice requests comments on the status of competition in the markets for delivery of video programming.

EchoStar is a multichannel video programming distributor ("MVPD") providing Direct Broadcast Satellite ("DBS") service to subscribers throughout the United States. It currently operates four DBS satellites and soon plans to launch additional satellites. As of July 1999, EchoStar had over 2.6 million subscribers.

Effective competition has yet to arrive in the MVPD markets. Even though the increases in DBS subscribers have confirmed that DBS services are perhaps the only viable alternative to cable at this time, cable operators still dominate most MVPD markets. To EchoStar's knowledge, the increases in subscriber counts of the two DBS distributors have not been accompanied by corresponding decreases in the number of cable subscribers or by substantial erosion of cable market shares. In particular, cable operators preserve their stranglehold in urban areas. This continued dominance is largely due to unfair or unlawful

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Comments of EchoStar Communications Corporation, *In re Amendment of Parts 2 and 25 of the Commission's Rules*, FCC ET Docket No. 98-206 (March 2, 1999), available on the FCC web site

<https://haifoss.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6006443772>.

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